

Amendment No. 1 to SB2849

Bailey
Signature of Sponsor

AMEND Senate Bill No. 2849

House Bill No. 2274*

by deleting all language after the caption and substituting instead the following:

WHEREAS, the right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society; and

WHEREAS, governmental regulation of conduct, while equally essential to public order and the preservation of universally held values, must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the individual; and

WHEREAS, this act appropriately and necessarily underscores and reaffirms the federal and state constitutional prohibition in the Takings Clause of the Fifth Amendment of the United States Constitution and in Article I, Section 21 of the Tennessee Constitution against taking private property for public use without just compensation; and

WHEREAS, the Tennessee Supreme Court ruled in *Phillips v. Montgomery County*, 442 S.W.3d 233 (2014) that Article I, Section 21 of the Tennessee Constitution should be interpreted no differently than the Takings Clause of the Fifth Amendment; and

WHEREAS, an individual private property owner should not be required, under the guise of police power regulation of the use and development of property, to bear burdens for the public good that should more properly be borne by the public at large; and

WHEREAS, the fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern; and

WHEREAS, the general assembly intends, through this act, to codify the constitutionally-based standard known as the *Nollan/Dolan* two-prong test, which has been established and

applied by the United States Supreme Court in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994); now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-3-403, is amended by adding the following as a new subsection:

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(1) In exercising the powers granted to it by § 13-3-402, a regional planning commission shall not require an owner of private property to dedicate real property to the public, or pay money to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local governmental interest and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of the property. An owner of private property required to make a dedication or pay money in violation of this subdivision () (1) may seek relief through a common law writ of certiorari in chancery court.

(2) Regulations adopted by regional planning commissions pursuant to this section must include the provisions in subdivision () (1).

(3) This subsection () does not apply to an assessment, fee, or charge that is imposed on a broad class of property owners by a local governmental entity.

SECTION 2. Tennessee Code Annotated, Section 13-4-303, is amended by adding the following as a new subsection:

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(1) In exercising the powers granted to it by § 13-4-302, the planning commission shall not require an owner of private property to dedicate real property to the public, or pay money to a public entity in an amount that is

determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local governmental interest and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of the property. An owner of private property required to make a dedication or pay money in violation of this subdivision () (1) may seek relief through a common law writ of certiorari in chancery court.

(2) Regulations adopted by planning commissions pursuant to this section must include the provisions in subdivision () (1).

(3) This subsection () does not apply to an assessment, fee, or charge that is imposed on a broad class of property owners by a local governmental entity.

SECTION 3. This act takes effect July 1, 2022, the public welfare requiring it.